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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/056,968 01/24/2002 Joanna Hong Zhang J6721(C) 3889

201 7590 04/21/2004

UNILEVER
PATENT DEPARTMENT
45 RIVER ROAD
EDGEWATER, NJ 07020

EXAMINER

WELLS, LAUREN Q

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 04/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/056,968

Applicant(s)

ZHANG ET AL.

Examiner

Lauren Q Wells

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 13 and 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/18/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

~~Claims 1-14 are pending. Claims 13-14 are withdrawn from consideration, as they are~~
directed toward a distinct invention. The Amendment filed 12/18/03, added claims 12-14.

No arguments were submitted against the rejection in the previous Office Action.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/18/03 has been entered.

Information Disclosure Statement

The information disclosure statement filed 12/18/03 does not fully comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of EP 0 522 756, EP 1 216 686, EP 1 216 695, that is not in the English language. These references have not been considered.

The additional references that have been lined through/not initialed, have been considered in previous IDS's or PTO-892's

Election/Restrictions

Newly submitted claims 13-14 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: See MPEP 706.07(h),

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Applicants may not switch inventions (divisional equivalent) as a matter of right. A method of stabilizing a water and oil emulsion is an invention distinct from a cosmetic composition.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 13-14 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Double Patenting

Claims 1-12 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2, 5, 8-9 of copending Application No. 10/056923. Although the conflicting claims are not identical, they are not patentably distinct from each other.

'923 teaches a cosmetic composition comprising 0.01-20% of a C1-C25 alpha or beta hydroxyl carboxylic acid at least partially present as a salt, wherein the acid and salt are present in a respective molar ratio of 100:1 to 1:1, 0.01-10% of acryloyl dimethyl taurate/vinylpyrrolidone copolymer, and a cosmetically acceptable carrier, wherein the composition has a pH of less than 7. Glycolic, lactic and 2-hydroxyoctanoic acid are claimed as the alpha hydroxyl carboxylic acids. The claims do not teach polysaccharide gums, glycerin, or preferred pH's. However, the specification of '923 teaches polysaccharide gums as co-thickening agents for use in the amount of .001-5% of the composition and teach glycerin as a humectant for use in the composition in the amount of 0.5-30%. The pH of the composition is taught as preferably between 2.5-3.8.

Thus, one of skill in the art would be motivated to exemplify the composition of '923 as further comprising polysaccharide gums because of the expectation of achieving enhanced thickening.

One of skill in the art would be motivated to exemplify glycerin in the composition of '923 because of the expectation of increase the effectiveness of the emollient, reduce scaling, stimulate removal of built up, and improve skin feel.

One of skill in the art would have been motivated to exemplify the pH of the composition of '923 as 2.5-3.8 because '923 teaches this pH range as preferred and because it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams (5,422,112) in view of Loffler et al. (InCosmetics, Dusseldorf) and in view of Beerse et al. (6,294,186).

The instant invention is directed toward a composition comprising from 0.001-5% of a polysaccharide-gum, 0.001-10% of a taurate copolymer, and a cosmetically acceptable carrier, wherein the composition has a pH less than 7.

Williams teaches thickened cosmetic compositions comprising a xanthan gum, an inorganic thickening agent, an alpha hydroxy carboxylic acid, and a cosmetically acceptable carrier. Glycolic acid, lactic acid, and 2-hydroxyoctanoic acid are taught as alpha hydroxyl carboxylic acid that comprise 0.01-20% of the composition. The gums are taught as comprising 0.01-5% of the composition. The pH of the compositions range from 1-8. Exemplified are compositions of 3.8-4 pH. Oil-in-water emulsions are taught as preferred cosmetic forms. For glycerin as a humectant that is included in the compositions in an amount of 0.5-30%, to increase the effectiveness of the emollient, reduce scaling, and stimulate removal of built up scale, and improve skin feel, see Col. 4, lines 43-58. The reference lacks taurate copolymers. See abstract; Col. 1, lines 45-54; Col. 3, lines 39-42; Col. 6, line 46.

Loffler et al. teach ammonium acryloyldimethyltaurate/vinyl pyrrolidone as a thickener for oil-in-water emulsions. The compound is taught as having good stability against degradation by high shear and UVA light, as having good compatibility with polar solvents, and as providing excellent sensoric properties to the user, such as good skin feel, low degree of stickiness and/or tackiness. See page 1.

Beerse et al. teach ammonium acryloyldimethyltaurate/ vinyl pyrrolidone, xanthan gums, and synthetic clays, which are inorganic thickeners, as combinable thickeners for use in cosmetic compositions. Beerse et al. exemplify ammonium acryloyldimethyltaurate/ vinyl pyrrolidone as comprising 2% of their compositions. See Col. 38, lines 25-31.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the ammonium acryloyldimethyltaurate/ vinyl pyrrolidone, taught by Löffler et al., into the composition of Williams because Beerse et al. teach ammonium acryloyldimethyltaurate/ vinyl pyrrolidone, inorganic thickeners, and xanthan gum, as combinable thickeners, and because of the expectation of achieving an oil-in-water emulsion that has good stability against degradation by high shear and UVA light and that provides good skin feel, low degree of stickiness and/or tackiness to the user.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to teach the taurate copolymer of the combined references as comprising 0.001-10% of the composition because it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is 571-272-0634. The examiner can normally be reached on M&R (5:30-4).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent

~~Application Information Retrieval (PAIR) system. Status information for published applications~~

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lqw



SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER